



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 4671-00

28 July 2000

CAPT [REDACTED] USMC

Dear Captain [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of the reviewing officer's comments from the contested fitness report for 14 May to 6 September 1993.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 29 June 2000, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 18 July 2000, copies of which are attached. They also considered your rebuttal letter dated 24 July 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board substantially concurred with the comments contained in the report of the PERB in finding no further correction of your fitness report record was warranted. Specifically regarding the fitness report at issue for 16 July 1998 to 27 May 1999, they found no requirement that the reviewing officer comments be consistent with the marks assigned by the reporting senior. They found that your more favorable prior and following fitness reports did not invalidate the report in question. Concerning the reporting period 1 August 1997 to 15 July 1998, they were unable to find that the reporting senior assumed the original report

was an annual, rather than transfer report, noting that item 3a (occasion) of this report was clearly marked "TR" (transfer).

The Board substantially concurred with the advisory opinion from MMOA-4 in concluding that the relief effected by CMC would not have materially changed your record as it appeared before the Fiscal Year (FY) 2000 and 2001 Major Selection Boards. They found the inclusion of the original fitness report for 1 August 1997 to 15 July 1998 in your record before the FY 2000 promotion board would not have improved your competitiveness, noting that this report marked you below your only peer. They concluded that your selection would have been definitely unlikely had your record not included the reviewing officer's comments on the report for 14 May to 6 September 1993, and had your record before the FY 2000 promotion board included the original report for 1 August 1997 to 15 July 1998. Since they found insufficient basis to remove either of your failures of selection for promotion, they had no grounds to set aside action to effect your discharge from the Regular Marine Corps on 1 August 2000.

Although the Board voted not to file in your official record the revised fitness report for 1 August 1997 to 15 July 1998, they noted that if you enter the Marine Corps Reserve, you may submit, with correspondence to future selection boards, the revised report and the reporting senior's letter dated 20 April 2000.

In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4671-00
IN REPLY REFER TO:
1610
MMER/PERB
29 JUN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMC

Ref: (a) Capt. [REDACTED] DD Forms 149(2) of 19 Apr 00
(b) MCO P1610.7C w/Ch 1-6
(c) MCO P1610.7D w/Ch 1-5
(d) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 June 2000 to consider Captain [REDACTED] petitions contained in reference (a). Action as indicated was requested on the following fitness reports:

a. Report A - 930514 to 930906 (TD) -- Removal in its entirety. Reference (b) applies.

b. Report B - 970801 to 980715 (TR) -- Replacement with a revised version. Reference (c) applies.

c. Report C - 980716 to 990527 (TD) -- Removal in its entirety. Reference (d) applies.

2. The petitioner believes the Reviewing Officer for Report A allowed his opinion of his (the petitioner's) skills as a pilot to impair his assessment. He also points out that [REDACTED] comments are inconsistent with those of the Reporting Senior and that he should have been given an opportunity to respond to their adverse nature. Concerning Report B, the petitioner furnishes a letter from the Reporting Senior wherein he states that in fairness to the other Captain who worked for him (Captain [REDACTED]), he reversed rankings from one reporting period to the other. He also offers his observation that to rank the petitioner as "2 of 2" demonstrates the inadequacy and unacceptability of the previous performance evaluation system. With regard to Report C, the petitioner argues that the marks in Sections D, E, F, and G reflect performance one level above adverse, yet there is no justification for such ratings. He also observes that Section I only contains administrative remarks; that Report C was the first under the new performance evaluation

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
 ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
 CAPTAIN [REDACTED] USMC

system; that at the time he did not fully understand the nature of the report.

3. In its proceedings, the PERB concluded that:

a. Given the tenor [REDACTED]'s comments, Report A, should have been processed as "adverse" under the guidance contained in Chapter 5 of reference (b). The Board does not, however, find that removal of the entire report is necessary. Instead, the Board has directed elimination of only the Reviewing Officer's Certification.

b. In paragraph three of his letter of 20 April 2000, Lieutenant Colonel [REDACTED] USMC, Retired) clearly indicates the petitioner was "2 of 2" on Report B because it was only fair for the other Captain to be rated "1 of 2." Succinctly stated, and notwithstanding Lieutenant Colonel [REDACTED]'s opinion of the prior performance evaluation system(s), when he completed Report B, he made a conscious decision to rank the petitioner as "2 of 2." His final sentence in Section C makes that decision both clear and evident (to wit: "Only rated two of two based on necessity."). It is very unfortunate that Report B was not before the FY00 Major Selection Board. In spite of the Reviewing Officer's comments implying the late submission of the report was solely the Reporting Senior's fault, had he completed his action as the Reviewing Officer in a timely manner, the report would have been presented to the Board. The FY00 Major Selection Board convened 17 November 1998; the Reporting Senior signed off on the report on 2 October 1998; the Reviewing Officer did not review it until February 1999. Regardless, that sequence of events does not now substantiate the Reporting Senior's desire to change the "2 of 2" rating."

c. There is absolutely nothing improper or adverse with Report C. The PARS wording identified with the individual markings in the 14 attributes explains the petitioner's level of effort and accomplishments. Under the provisions of reference (d), only positive markings of "F" or "G" require specific justification. The comments contained in Section I (mandatory/additional) are as mandated for by reference (d) and complete the overall evaluation.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the modified version of Report A, the currently configured version of Report B, and Report C should remain a part

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMC

of Captain [REDACTED] official military record. The limited
corrective action identified in subparagraph 3a is considered
sufficient.

5. The case is forwarded for final action [REDACTED]

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4671-00

IN REPLY REFER TO:

1600
MMA-4
18 Jul 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Capt. [REDACTED] USMC
of 13 Jul 00

1. Recommend disapproval of Captain [REDACTED] request for removal of his failures of selection.
2. Per the reference, we reviewed Captain [REDACTED] and petition. He failed selection on the FY00 and FY01 USMC Major Selection Boards. Subsequently, he petitioned the Performance Evaluation Review Board (PERB) for removal of the To Temporary Duty fitness report of 930514 to 930906, removal of the To Temporary Duty fitness report of 980716 to 990527, and replacement of the Transfer fitness report of 970801 to 980715 with a revised version. The PERB's corrective action consisted of removing the Reviewing Officer comments from the To Temporary Duty fitness report of 930514 to 930906. Captain [REDACTED] requests removal of his failures of selection.
3. In our opinion, removing the petitioned reports would have increased the competitiveness of the record. However, the limited PERB action does not reflect a substantial material change in the record as it appeared before the FY00 and FY01 Boards and his record received a substantially complete and fair evaluation by both boards. Therefore, we recommend disapproval of Captain Kalogiannis' request for removal of his failures of selection.
4. Point of contact [REDACTED]

[REDACTED]
Colonel, U.S. Marine Corps
Head, Officer Assignments Branch
Personnel Management Division